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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,343

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Aizo Sakurai

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3M INNOVATIVE PROPERTIES COMPANY

PO BOX 33427

ST. PAUL, MN 55133-3427

EXAMINER

KOKKINOS, NICHOLAS C

ART UNIT

PAPER NUMBER

4132

NOTIFICATION DATE

DELIVERY MODE

01/09/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/596,343	Applicant(s) SAKURAI ET AL.	
	Examiner NICHOLAS KOKKINOS	Art Unit 4132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
4a) Of the above claim(s) 1-4 and 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 5-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20061103</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.
2. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.
3. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4, drawn to a pressure-sensitive adhesive composition.

Group II, claim(s) 5-10, drawn to a pressure-sensitive adhesive tape.

Group III, claim(s) 11-14, drawn to an adhesion structure.

4. The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: evidence of lack of unity of invention in light of USPN 6,488,228 to Davies et al.

5. Davies et al. teaches a pressure sensitive adhesive composition comprising a cohesive component of styrene-based block copolymer (*col. 7, lines 37-39*). Davies et al. also teaches the basic component, described by Applicant (*page 26, lines 21-22*) as containing (meth)acrylic copolymers (*col. 7, lines 62-64*). Davies et al. thus teaches the entirety of Applicant's claim 1.

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6. The subject matter of claim 1 is the corresponding technical feature common among Groups I, II, and III. As such, the corresponding technical feature is not a corresponding special technical feature that defines a contribution over the prior art.

7. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

8. The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

10. During a telephone conversation with David Patchett at 651-736-4713 on 12 December 2008 a provisional election was made without traverse to prosecute the invention of Group II, claims 5-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-4 (Group I) and claims 11-14 (Group II) are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

11. Receipt is acknowledged of the certified copy of Japanese Patent Application JP3003-414511 submitted under 35 U.S.C. 119(a)-(d). The papers have been placed of record in the file.

Abstract

12. The abstract of the disclosure is objected to because it is less than 50 words long and lacks description. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. Correction is required. See MPEP § 608.01(b).

Information Disclosure Statement

13. The cited reference of DE3331016 on the IDS filed 3 November 2006 was not considered because the provided abstract translation was for JP3331016 instead.

14. The information disclosure statement filed 3 November 2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Drawings

15. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 3, 53. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

16. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: sheet-like support 13 (*page 11, line 10*). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

17. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

18. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

19. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

20. Claims 5-10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,179,529 in view of USPA 2003/0118970 to Rusin et al.

21. Regarding Applicant's claim 5, Patent '529 claims an adhesive tape (*adhesive film*) comprising a stretchable substrate (*base material*) and an adhesive layer provided on at least one surface of said substrate (*claim 4*). Patent '529 further claims that the adhesive layer is formed from an acrylic adhesive (*claim 5*).

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22. Rusin et al. discloses an adhesive tape (*page 6, para. [0060]*) comprising a stretchable substrate (*page 6, para. [0055]*) and an adhesive layer provided on at least one surface of said substrate. The adhesive layer is a pressure sensitive adhesive and comprises a cohesive component comprising a styrene-based block copolymer, and a basic component such as (meth)acrylic copolymers (*page 3, para. [0034]* and *page 4, para. [0040]*). The adhesive is capable of being pulled and detached without significant damage to the substrate surface, and without leaving a significant residue on the substrate surface (*page 3, para. [0013]*).

23. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a pressure sensitive adhesive comprising a styrene-based block copolymer, and a basic component as taught by Rusin et al. as the adhesive layer in Patent '529 in order to have an adhesive capable of being pulled and detached from a substrate surface without significant damage to the substrate surface, and without leaving a significant residue on the substrate surface.

24. Regarding applicant's claim 6, Patent '529 claims that the substrate comprises a single layer of highly extensible polymer film, since Patent '529 claims that the base material comprises at least a first resin film with a breaking elongation in the length direction of 300-1500% (*claim 4*).

25. Regarding claim 7, Rusin et al. further teaches that the highly extensible polymer film comprises a foamed polymer film (*page 6, para. [0058]*).

26. Regarding claim 8, Rusin et al. further teaches that the substrate may also be of multilayer films, comprised of combinations of non-wovens, porous films, and foam-like

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films (*page 6, para. [0058]*). This teaches that the substrate may be a composite, multilayer film of foamed and foaming-free film.

27. Regarding claim 9, Rusin et al. further teaches that the adhesive has a thickness of 25 to 1,000 micrometers (*page 4, para. [0040]*). This overlaps Applicant's claimed range.

28. Regarding claim 10, Rusin et al. further teaches that a release layer covers the pressure sensitive adhesive layer (*page 7, para. [0068]*).

29. Claims 5-10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,910,667 in view of USPA 2003/0118970 to Rusin et al.

30. Regarding claim 5, Patent '667 teaches a pressure sensitive adhesive tape comprising a stretchable substrate (*extensible backing*) and pressure sensitive adhesive layer (*permanent pressure sensitive adhesive layer*) on a surface of the substrate (*claim 10*). Patent '667 does not teach the composition of the pressure sensitive adhesive.

31. Rusin et al. teaches different compositions that may be used in pressure sensitive adhesives, including a cohesive component comprising a styrene-based block copolymer, and a basic component such as (meth)acrylic copolymers (*page 3, para. [0034] and page 4, para. [0040]*). Rusin et al. further teaches that the listed pressure sensitive adhesives may be combined to optimize their resultant properties, noting that styrene based block copolymers, for example, are stretchy, and that others may provide reinforcing properties (*page 4, para. 0040*). Adhesives that are stretchy as well as

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reinforced are desirable because they maintain their cohesive strength, which is important for their structural integrity as they are stretched.

32. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the stretch releasing adhesive article of Patent '667 with the adhesive compositions disclosed by Rusin et al., because an adhesive tape that is stretchy and reinforced can maintain its cohesive structure even when stretched across the surface that it is applied to.

33. Regarding claim 6, Rusin et al. further teaches the pressure sensitive adhesive tape, and that it comprises a highly extensible polymer sheet material, such that it exhibits a lengthwise elongation at break of about 150% or greater (*page 6, para. [0055]*). It is noted that Applicant requires "highly extensible" tapes to be able to elongate at least about 150% (*page 13, lines 7-11*). Rusin et al. also teaches that the films (*backings*) may be single- or multi-layer, and that the films are polymeric (*page 6, para. [0058]*).

34. Patent '667 teaches that the backing should be extensible, and that the adhesive article should be flexible enough so that it is stretch releasable (*claim 10*). Rusin et al. elaborates, stating that the backing should be highly extensible, and that the Young's Modulus, which determines extensibility, should be optimized for releasability (*page 6, para. [0056]*). Particularly, if the Young's modulus is too low, backing will be difficult to cleanly release, but too high, and the backing loses its plastic character. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the

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Young's modulus, and hence the extensibility, of the backing in order to make it highly extensible so that it could cleanly release upon stretching.

35. Regarding claim 7, Rusin et al. further teaches that the highly extensible polymer film has an elongation at break of about 50% or greater, (*page 6, para. [0055]*), elastic recovery of less than 50% after stretching (*page 6, para. [0056]*), and Young's modulus of 17,237 kPa to 499,870 kPa (*page 6, para. [0056]*).

36. Regarding claim 8, Rusin et al. further teaches that the substrate may also be of multilayer films, comprised of combinations of non-wovens, porous films, and foam-like films (*page 6, para. [0058]*). Rusin et al. thus teaches that the substrate may be a composite, multilayer film of foamed and foaming-free film.

37. Regarding claim 9, Rusin et al. further teaches that the adhesive has a thickness of 25 to 1,000 micrometers (*page 4, para. 0040*). This overlaps Applicant's claimed range.

38. Regarding claim 10, Rusin et al. further teaches that a release layer covers the pressure sensitive adhesive layer (*page 7, para. [0068]*).

39. Claims 8 and 9 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 27 and 28 of copending Application No. 11/721,551. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious with respect to one another.

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40. The language of instant claims 7-9 is identical to that of claims 26-28 in copending application 11/721,551. However, the dependencies, and thus the limitations, are not identical.

41. Instant claim 7 depends only on instant claim 5. Claim 26 of Application '551 depends on claims 24 and 25 of Application '551.

42. Instant claim 8 depends only on instant claim 5. Claim 27 of Application '551 depends on claims 24-26.

43. Instant claim 9 depends only on instant claim 5. Claim 28 of Application '551 depends on claims 24-27.

44. The claims of Application '551 teach that stretchable pressure sensitive adhesive tapes with certain properties and structures are desirable in the art. Application '551 further teaches that for the finite list of structures, a finite list of properties result. In light of these facts, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the claims of Application '551 to create the claims of the instant application.

45. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

46. Claims 5-7 of this application conflict with claims 24-26 of Application No. 11/721,551. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their

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retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

47. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

48. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

49. Claims 5 and 6 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 25 and 26, respectively, of copending Application No. 11/721,551.

50. The claims in question are identical.

51. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

52. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

53. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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54. Applicant defines a “highly extensible film” specifically as when a pressure sensitive adhesive tape is stretched, it must possess elongation of at least about 150% (*page 13, lines 7-11*). A highly extensible film is claimed in claim 6. However, claim 7, which depends on claim 6, claims a polymer film having a lengthwise elongation at break of 50% to 1200%. This is a range that falls outside of a highly extensible film, because a polymer film having an elongation at break of only 50% would be physically incapable of being highly extensible, because it cannot stretch beyond 50% without failure.

Claim Rejections - 35 USC § 102

55. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

56. Claims 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by USPA 2003/0118970 to Rusin et al.

57. Regarding claim 5, Rusin et al. teaches a pressure sensitive adhesive tape (*page 6, para. [0060]*) comprising a substrate (*backing*) with an adhesive coating. The pressure sensitive adhesive layer is provided on at least one surface of said substrate, because it can be coated directly onto the substrate or formed as a separate layer and then laminated (*page 6, para. [0060]*). Both the substrate (*page 6, para. [0055]*) and the adhesive (*page 4, para. [0040]*) are capable of being stretched (*extensible, page 3,*

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para. [0032]). Rusin et al. also teaches that the pressure sensitive adhesive may include a multitude of compositions such as styrene-based block copolymers and basic components such as (meth)acrylic copolymers (*page 3, para. [0034]*), and that the different listed pressure sensitive adhesive compositions may be combined (*page 4, para. [0040]*).

58. Regarding claim 6, Rusin et al. teaches the pressure sensitive adhesive tape as above, and that it comprises a highly extensible polymer sheet material, such that it exhibits a lengthwise elongation at break of about 150% or greater (*page 6, para. [0055]*). It is noted that Applicant requires "highly extensible" tapes to be able to elongate at least about 150% (*page 13, lines 7-11*). Furthermore, Rusin et al. teaches that the films (*backings*) may be single- or multi-layer, and that the films are polymeric (*page 6, para. 0058*).

59. Regarding claim 7, Rusin et al. teaches a pressure sensitive adhesive tape as above, and that the highly extensible polymer film has lengthwise elongation at break of about 50% or greater, and less than about 1200% (*page 6, para. [0055]*). The same highly extensible polymer films also have a Young's modulus between 6894.7 kPa and 499,865.8 kPa (*page 6, para. [0056]*). The films may also be foamed (*page 6, para. [0058]*).

60. Regarding claim 8, Rusin et al. teaches a pressure sensitive adhesive tape as above, and that the backing film may be a polymeric foam film (*page 6, para. [0058]*). Rusin et al.'s backing film may also be multilayer films, comprised of combinations of non-wovens, porous films, and foam-like films (*page 6, para. [0058]*). The foam-like

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films of Rusin et al. are the same as foamed films, and non-woven and porous films are examples of foam-free films. Rusin et al. thus teaches that the substrate may be a composite, multilayer film of foamed and foaming-free film.

61. Regarding claim 9, Rusin et al. teaches a pressure sensitive adhesive tape as above, and further teaches that the pressure sensitive adhesive layer may have a thickness of 25 to 1,000 micrometers (*page 4, para. 0040*). This overlaps Applicant's claimed range.

62. Regarding claim 10, Rusin et al. teaches a pressure sensitive adhesive tape as above, and additionally teaches that a release liner may cover the pressure sensitive adhesive (*page 7, para. 0068*).

CONCLUSION

63. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICHOLAS KOKKINOS whose telephone number is (571)270-7384. The examiner can normally be reached on Monday-Thursday 9am-5pm.

64. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Lavilla can be reached on 571-272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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65. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NK/
Nicholas Kokkinos
Examiner, Art Unit 4132
30 December 2008

/Alicia Chevalier/
Primary Examiner, Art Unit 1794